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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3849

04/07/2016 Authored by Mack, Daudt, Peppin, Pelowski, Murphy, M., and others
The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act
1.2 relating to health; enacting the Unborn Child Protection from Dismemberment
1.3 Abortion Act; imposing civil and criminal penalties; proposing coding for new
1.4 law in Minnesota Statutes, chapter 145.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. [145.4221] UNBORN CHILD PROTECTION FROM
1.7 DISMEMBERMENT ABORTION ACT.

1.8 Subdivision 1. Short title. This act may be cited as the "Unborn Child Protection
1.9 from Dismemberment Abortion Act."

1.10 Subd. 2. Definitions. For the purposes of this act:

1.11 (a) "Abortion" means the use or prescription of any instrument, medicine, drug,
1.12 or any other substance or device:

1.13 (1) to purposely kill the unborn child of a woman known to be pregnant; or

1.14 (2) to purposely terminate the pregnancy of a woman known to be pregnant, with a
1.15 purpose other than:

1.16 (i) after viability to produce a live birth and preserve the life and health of the child
1.17 born alive; or

1.18 (ii) to remove a dead unborn child.

1.19 (b) "Attempt to perform an abortion" means to do or omit to do anything that, under
1.20 the circumstances as the actor believes them to be, is an act or omission constituting a
1.21 substantial step in a course of conduct planned to culminate in the actor performing an
1.22 abortion. Such substantial steps include, but are not limited to:

1.23 (1) agreeing with an individual to perform an abortion on that individual or on some
1.24 other person, whether or not the term abortion is used in the agreement, and whether

2.1 or not the agreement is contingent on another factor such as receipt of payment or a
 2.2 determination of pregnancy; or

2.3 (2) scheduling or planning a time to perform an abortion on an individual, whether
 2.4 or not the term abortion is used, and whether or not the performance is contingent on
 2.5 another factor such as receipt of payment or a determination of pregnancy.

2.6 This definition shall not be construed to require that an abortion procedure actually
 2.7 must be initiated for an attempt to occur.

2.8 (c) "Dismemberment abortion" means the purpose of causing the death of an unborn
 2.9 child purposely to dismember a living unborn child and extract the living unborn child
 2.10 one piece at a time from the uterus through the use of clamps, grasping forceps, tongs,
 2.11 scissors, or similar instruments that, through the convergence of two rigid levers, slice,
 2.12 crush, or grasp a portion of the unborn child's body to cut or rip it off.

2.13 The term dismemberment abortion does not include an abortion which uses suction
 2.14 to dismember the body of the unborn child by sucking fetal parts into a collection
 2.15 container, although it does include an abortion in which a dismemberment abortion, as
 2.16 defined in paragraph (c), is used to cause the death of an unborn child but suction is
 2.17 subsequently used to extract fetal parts after the death of the unborn child.

2.18 (d) "Physician" means a person licensed to practice medicine and surgery or
 2.19 osteopathic medicine and surgery, or otherwise legally authorized to perform an abortion.

2.20 (e) "Purposely" means a person acts purposely with respect to a material element
 2.21 of an offense when:

2.22 (1) if the element involves the nature of the actor's conduct or a result thereof, it is the
 2.23 actor's conscious intent to engage in conduct of that nature or to cause such a result; and

2.24 (2) if the element involves the attendant circumstances, the actor is aware of the
 2.25 existence of such circumstances or the actor believes or hopes the circumstances exist.

2.26 (f) "Serious health risk to the unborn child's mother" means that in reasonable medical
 2.27 judgment she has a condition that so complicates her medical condition that it necessitates
 2.28 the abortion of her pregnancy to avert her death or to avert serious risk of substantial and
 2.29 irreversible physical impairment of a major bodily function, not including psychological
 2.30 or emotional conditions. No such condition may be determined to exist if it is based on a
 2.31 claim or diagnosis that the woman will engage in conduct which she intends to result in
 2.32 her death or in substantial and irreversible physical impairment of a major bodily function.

2.33 (g) "Woman" means a female human being whether or not she has reached the
 2.34 age of majority.

2.35 Subd. 3. **Dismemberment abortion.** (a) Notwithstanding any other provision of
 2.36 law, it shall be unlawful for any person to purposely perform or attempt to perform a

3.1 dismemberment abortion and thereby kill an unborn child unless it is necessary to prevent
 3.2 a serious health risk to the unborn child's mother.

3.3 (b) A person accused in any proceeding of unlawful conduct under paragraph
 3.4 (a) may seek a hearing before the state medical board on whether the dismemberment
 3.5 abortion was necessary to prevent a serious health risk to the unborn child's mother. The
 3.6 board's findings are admissible on that issue at any trial in which such unlawful conduct is
 3.7 alleged. Upon a motion of the person accused, the court shall delay the beginning of the
 3.8 trial for not more than 30 days to permit such a hearing to take place.

3.9 (c) No woman upon whom an abortion is performed or attempted to be performed
 3.10 shall be liable for performing or attempting to perform a dismemberment abortion. No
 3.11 nurse, technician, secretary, receptionist, or other employee or agent who is not a physician
 3.12 but who acts at the direction of a physician, and no pharmacist or other individual who is
 3.13 not a physician but who fills a prescription or provides instruments or materials used in an
 3.14 abortion at the direction of or to a physician shall be liable for performing or attempting to
 3.15 perform a dismemberment abortion.

3.16 (d) This act does not prevent abortion for any reason including rape and incest by
 3.17 any other method.

3.18 **Subd. 4. Injunctions against dismemberment abortions.** (a) A cause of action
 3.19 for injunctive relief against a person who has performed or attempted to perform a
 3.20 dismemberment abortion in violation of subdivision 3 may be maintained by:

3.21 (1) a woman upon whom such a dismemberment abortion was performed or
 3.22 attempted to be performed;

3.23 (2) a person who is the spouse, parent or guardian of, or a current or former licensed
 3.24 health care provider of, a woman upon whom such a dismemberment abortion was
 3.25 performed or attempted to be performed; or

3.26 (3) a prosecuting attorney with appropriate jurisdiction.

3.27 (b) The injunction shall prevent the defendant from performing or attempting to
 3.28 perform further dismemberment abortions in violation of subdivision 3.

3.29 **Subd. 5. Civil remedies.** (a) A cause of action for civil damages against a person
 3.30 who has performed a dismemberment abortion in violation of subdivision 3 may be
 3.31 maintained by:

3.32 (1) any woman upon whom a dismemberment abortion has been performed in
 3.33 violation of subdivision 3;

3.34 (2) the father of the unborn child, if married to the woman at the time the
 3.35 dismemberment abortion was performed; or

4.1 (3) if the woman has not attained the age of 18 years at the time of the
4.2 dismemberment abortion or has died as a result of the abortion, the maternal grandparents
4.3 of the unborn child.

4.4 (b) No damages may be awarded a plaintiff if the pregnancy resulted from the
4.5 plaintiff's criminal conduct.

4.6 (c) Damages awarded in such an action shall include:

4.7 (1) money damages for all injuries, psychological and physical, occasioned by
4.8 the dismemberment abortion; and

4.9 (2) statutory damages equal to three times the cost of the dismemberment abortion.

4.10 Subd. 6. **Attorney fees.** (a) If judgment is rendered in favor of the plaintiff in an
4.11 action described in subdivision 4 or 5, the court shall also render judgment for a reasonable
4.12 attorney fee in favor of the plaintiff against the defendant.

4.13 (b) If judgment is rendered in favor of the defendant in an action described in
4.14 subdivision 4 or 5 and the court finds that the plaintiff's suit was frivolous and brought
4.15 in bad faith, the court shall render judgment for a reasonable attorney fee in favor of
4.16 the defendant against the plaintiff.

4.17 (c) No attorney fee may be assessed against the woman upon whom an abortion was
4.18 performed or attempted to be performed except in accordance with paragraph (b).

4.19 Subd. 7. **Criminal penalty.** Whoever violates subdivision 3 shall be fined \$10,000
4.20 or imprisoned for not more than two years or both.

4.21 Subd. 8. **Protection of privacy in court proceedings.** In every civil, criminal, or
4.22 administrative proceeding or action brought under this act, the court shall rule whether the
4.23 anonymity of any woman upon whom an abortion has been performed or attempted to
4.24 be performed shall be preserved from public disclosure if she does not give her consent
4.25 to such disclosure. The court, upon motion or sua sponte, shall make such a ruling
4.26 and, upon determining that her anonymity should be preserved, shall issue orders to the
4.27 parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of
4.28 individuals from courtrooms or hearing rooms to the extent necessary to safeguard her
4.29 identity from public disclosure. Each such order shall be accompanied by specific written
4.30 findings explaining why the anonymity of the woman should be preserved from public
4.31 disclosure, why the order is essential to that end, how the order is narrowly tailored to serve
4.32 that interest, and why no reasonable less restrictive alternative exists. In the absence of
4.33 written consent of the woman upon who an abortion has been performed or attempted to be
4.34 performed, anyone other than a public official who brings an action under subdivision 4 or
4.35 5 shall do so under a pseudonym. This section may not be construed to conceal the identity
4.36 of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

5.1 Subd. 9. **Construction.** Nothing in this act shall be construed as creating or
5.2 recognizing a right to abortion, nor a right to a particular method of abortion.

5.3 Subd. 10. **Severability.** If any one of more provisions, sections, paragraphs,
5.4 sentences, clauses, phrases, or words of this act or the application thereof to any person or
5.5 circumstance is found to be unconstitutional, the same is hereby declared to be severable
5.6 and the balance of this act shall remain effective notwithstanding such unconstitutionality.
5.7 The legislature hereby declares that it would have passed this act, and each provision,
5.8 section, paragraph, sentence, clause, phrase, or word thereof, irrespective of the fact that
5.9 any one or more provisions, sections, paragraphs, sentences, clauses, phrases, or words be
5.10 declared unconstitutional.